

DEC 30 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SUNG SUK HAN,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-75045

Agency No. A043-164-459

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 17, 2008^{**}

Before: WALLACE, TROTT, and RYMER, Circuit Judges.

Sung Suk Han, a native and citizen of South Korea, petitions for review of the Board of Immigration Appeals' order summarily affirming an immigration judge's removal order. We have jurisdiction under 8 U.S.C. § 1252. We review de

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

novo questions of law, *Estrada-Espinoza v. Mukasey*, 546 F.3d 1147, 1152 (9th Cir. 2008) (en banc), and we grant the petition for review.

Subsequent to the agency's decisions in this case, we determined that a conviction under California Penal Code § 261.5(c) is not categorically a conviction for "sexual abuse of a minor" under 8 U.S.C. § 1101(a)(43)(A). *Estrada-Espinoza*, 546 F.3d at 1160. Moreover, the modified categorical approach cannot be used to conform Han's conviction to the generic definition of "sexual abuse of a minor." *Id.* As Han's § 261.5(c) conviction was the basis for the agency's removal order, we grant the petition for review.

Han's counsel is reminded that unpublished dispositions filed before January 1, 2007 may not be cited to this court. *See* 9th Cir. R. 36-3(c).

PETITION GRANTED.